

1 MARTIN D. BERN (State Bar No. 153203)

Martin.Bern@mta.com

2 MALCOLM A. HEINICKE (State Bar No. 194174)

Malcolm.Heinicke@mta.com

3 MUNGER, TOLLES & OLSON LLP

560 Mission Street, Twenty-Seventh Floor

4 San Francisco, CA 94105-2907

Telephone: (415) 512-4000

5 Facsimile: (415) 512-4077

6 Attorneys for Defendant

GUARDSMARK, LLC

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN FRANCISCO DIVISION

11 JOHNNY MCFARLAND, on behalf of
12 himself and all others similarly situated,

13 Plaintiff,

14 vs.

15 GUARDSMARK, LLC, and Does 1
through 50, inclusive,

16 Defendant.

CASE NO. CV 07-03953 PJH

**SECOND STIPULATION AND
[PROPOSED] ORDER RE:
GUARDSMARK'S MOTION FOR
ATTORNEY'S FEES**

1 WHEREAS, the Court entered judgment in this matter on August 26, 2008, and
2 thus absent an Order of the Court, Guardsmark would have needed to file a motion seeking some
3 or all of its incurred attorney's fees no later than September 9, 2008,

4 WHEREAS, the Court has now extended this deadline at the request of the parties
5 to September 16, 2008 to facilitate meet and confer sessions;

6 WHEREAS, Defendant Guardsmark, LLC ("Guardsmark") has notified Plaintiff
7 Johnny McFarland of Guardsmark's intent to file a motion seeking some of its incurred attorney's
8 fees;

9 WHEREAS, district courts retain jurisdiction to hear post-judgment attorney's fee
10 motions despite a pending appeal of the underlying case. *See, e.g., Masalosalo v. Stonewall Ins.*
11 *Co.*, 718 F.2d 955, 957 (9th Cir. 1983);

12 WHEREAS, counsel for the parties are engaging in the meet and confer process,
13 and counsel for Plaintiff have informed counsel for Guardsmark that Plaintiff is willing to
14 stipulate to the requested fee award, pending agreement on a formal stipulation to this effect;

15 WHEREAS, the parties are now working on such a stipulation for submission;

16 WHEREAS, to facilitate these further discussions, the parties respectfully request
17 an extension and clarification of the current deadline to file a motion for fees;

18 WHEREAS, the parties through their counsel of record stipulate to the entry of an
19 order as follows:

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IT IS HEREBY STIPULATED THAT:

The deadline for Guardsmark to file a motion for attorney's fees based on the judgment entered in this case, or a stipulation concerning such an award, is hereby extended to September 26, 2008. The filing of either a motion for attorney's fees or a stipulation concerning such an award shall be sufficient to satisfy this deadline and the associated deadline in Federal Rule of Civil Procedure 54(d)(2)(B)(i).

DATED: September 11, 2008

MUNGER, TOLLES & OLSON LLP

By: /s/ Malcolm A. Heinicke
MALCOLM A. HEINICKE

Attorneys for Defendant
GUARDSMARK, LLC

DATED: September 11, 2008

QUALLS & WORKMAN, L.L.P.

By: /s/ Daniel Qualls
DANIEL QUALLS

Attorneys for Plaintiff
JOHNNY MCFARLAND

I, Malcolm A. Heinicke, attest that I have obtained concurrence from Daniel Qualls in the filing of this Stipulation And [Proposed] Order Re: Guardsmark's Motion For Attorney Fees. See N.D. Cal. General Order 45 § 10(B).

PURSUANT TO STIPULATION, IT IS SO ORDERED. The deadline for Guardsmark to file its motion for attorney's fees based on the judgment entered in this case, or a stipulation concerning such an award, is hereby extended to September 26, 2008. The filing of either a motion for attorney's fees or a stipulation concerning such an award shall be sufficient to satisfy this deadline and the associated deadline in Federal Rule of Civil Procedure 54(d)(2)(B)(i).

DATED:

The Honorable Phyllis J. Hamilton
United States District Judge